IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 86 OF 1998

Babiyabi Salemohamed Pathan. ... Appellant.

Versus.

Nazir Ibrahim Pathan & ors. ... Respondents.

Shri R.M.Hardas i/by Shri Pramod Joshi for the Appellant.

Shri S.G.Surana for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 27th January, 2005.

P.C.:

1. Heard learned Counsel for the parties. The first contention of the learned Counsel for the Appellant is that there is no clear admission given in the evidence that the original Plaintiff is the owner of the property and that the admission is to the effect that the suit property was ancestral property of the Plaintiff. The Appellant/Org.Defendant No.1 claims on the basis of a sale deed executed by the Respondents Nos.2 and 3 (original Defendants Nos.2 and 3). Even according to the Appellant, the Defendants Nos.2 and 3 entered the property on the basis of a deed of mortgage executed in their favour. Admittedly the said deed of mortgage is not produced and proved before the Courts below. When it is an admitted position that the suit property is an ancestral property of the Plaintiff, the Appellant will not get any right, title and interest in the property

unless the Appellant establishes that the Respondents Nos.2 and 3 were competent to execute the sale deed. In the absence of the document of title of Respondents Nos.2 and 3, the Appellant could not have established his title.

2. The second submission made by the learned Counsel for the Appellant is that the plea of adverse possession was raised by the Appellant and the finding given by the Courts below on the said plea is erroneous. He has taken me through the notes of evidence. I find that the Appellant always claimed to be in possession on the basis of the document of sale allegedly executed by the Respondents Nos.2 and 3. Notwithstanding the long standing possession, I find that there is no assertion of hostile title by the Appellant and that is precisely the finding of the Appellate Court.

3. No substantial question of law arises in the Second Appeal. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge.